



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Development Associates, Inc.
File: B-233221
Date: February 10, 1989

DIGEST

Protest that agency relaxed a solicitation requirement that Project Director be assigned on an 80 percent time basis by accepting a proposal offering to perform with a Project Director on only a 53 percent basis is denied where record shows that the outcome of the competition would not have been different had the agency informed the protester of the relaxed requirement.

DECISION

Development Associates, Inc. (DAI), protests the award of a contract to Research Triangle Institute (RTI) by the Department of Education under request for proposals (RFP) No. 88-042. The RFP was for the analysis and reporting of data collected under a previous study, entitled "National Longitudinal Evaluation of the Effectiveness of Services for Language-Minority Limited-English-Proficient Students."^{1/} DAI argues that the agency relaxed a material RFP requirement for RTI, without informing DAI and other offerors. DAI also complains that an additional technical requirement was imposed on it during negotiations which was not imposed on RTI.

We deny the protest.

The RFP, issued on May 9, 1988, contemplated the award of a cost reimbursement type contract and provided that award would be made to the offeror whose proposal represented a

^{1/} This study was designed to supply information on the kinds of services provided limited-English-proficient students, and how these services affect the learning of English and academic progress generally. The RFP required analysis of the collected data and a final written report which would be used by the government in formulating policy with respect to bilingual education.

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combination of technical merit and cost most favorable to the government. However, the RFP stated that technical considerations would be of paramount importance. The RFP contained a detailed statement of work and required the offerors to submit a detailed work plan in their proposals indicating how each aspect of the statement of work would be accomplished. The RFP's statement of work specifically provided that "the contractor shall provide a Project Director on at least an 80 percent basis."

The RFP listed the following technical evaluation criteria and their respective weights:

1. Personnel	40
A. Project Director	20
B. Proposed Professional Staff	20
2. Technical Quality of the Proposal	30
A. Quality of Plans and Procedures	25
B. Discussion of services	5
3. Project Management	16
A. Task coordination and continuity	4
B. Quality of proposed plans that lead to the appropriate and efficient use of personnel	6
C. Cost Effectiveness	6
4. Corporate Capabilities	7
5. Facilities and Equipment	7

Concerning criterion 1.A., Project Director, the RFP stated that each offeror's proposed Project Director would be evaluated with respect to advanced training and experience in statistical analysis and database management, as well as experience in project supervision consistent with the requirements of the statement of work.

Seven firms submitted proposals. In its initial proposal, RTI proposed as Project Director an individual with extensive experience in decision theory, computer applications, educational evaluation and project management, including work with a subcontractor under the previous study that generated the data. This individual also had unique experience in causal modeling analysis which was required under the RFP. However, RTI only proposed a "time

commitment of approximately 50 percent" for the Project Director, supplemented by the time of a senior staff specialist who had also participated in the development of the database.^{2/} RTI did offer to increase the time commitment of the Project Director if "needed."

During its initial evaluation, the agency evaluators slightly downgraded the RTI proposal for the reduced time commitment of the Project Director under evaluation criterion 3.B, appropriate and efficient use of personnel, which was only worth 6 points of 100 total points.^{3/} The evaluators did not downgrade the proposal under evaluation criterion 1.A., qualifications of Project Director. Results of initial evaluation with respect to these two firms, the only ones eventually remaining in the competitive range, were as follows:

<u>Offeror</u>	<u>Average Points</u>	<u>Cost</u>
DA	76.6	\$256,001
RTI	84.4	\$249,663

The agency, during subsequent discussions, asked RTI to justify the time commitment proposed for the Project Director at less than the 80 percent level which "the RFP requires." RTI responded in its best and final offer (BAFO) that the proposed Project Director had "existing familiarity with the specific data," and that the proposed time commitment was the "most cost effective for the government." RTI again offered to increase the time commitment for the Project Director "if desired" by the agency.

In evaluating BAFOs, two of the agency evaluators rated DAI as the best technically acceptable offeror, and two evaluators rated RTI as the best offeror. The evaluation panel noted that DAI had the advantage of policy experience in bilingual education and was the prime contractor for the previous data gathering study. However, the panel found that RTI had the advantage of the superior technical expertise of the proposed Project Director. In this regard, the agency accepted RTI's rationale for less than 80 percent

^{2/} RTI proposed its Project Director with a time commitment of 53 percent. The senior staff specialist was proposed at 22 percent but had other duties.

^{3/} In fact, the RTI proposal was downgraded by the evaluators only a fraction of the 6 points available under this criterion.

assignment of the Project Director in view of the unique qualifications of the Project Director and the senior staff specialist. The source selection official (the contracting officer's technical representative) decided that "[a]ll other things being equal, the government should purchase the support of the strongest technical expertise available since the statistical analysis represents by far the major component of the project." Final cost evaluations were as follows:

<u>Offeror</u>	<u>Cost^{4/}</u>
RTI	\$243,957
DAI	\$261,745

Award was made to RTI on September 30, 1988, and this protest followed.

DAI contends that by accepting RTI's proposal in which RTI, contrary to the solicitation requirement, proposed a Project Director on only a 53 percent time basis, the agency relaxed a material RFP requirement without informing all offerors. DAI argues that this change had important technical and cost implications.

The agency states that, in accepting RTI's proposal, it did not in any way modify the required product; all objectives, deliverables, and scheduling of the study remained the same as stated in the RFP. Further, the agency notes that RTI's proposal was downgraded for the reduced time commitment of its Project Director, and argues that the 80 percent time commitment in the RFP was not a mandatory requirement, but "an estimate as to the amount of a Project Director's time that would be needed to achieve the performance requirements of the contract."

Here, as indicated above, RTI persuaded the agency that a 53 percent time commitment by its proposed Project Director met its needs in view of the unique and extensive experience of the Project Director and senior staff specialist. Generally, when the government changes or relaxes its requirements, either before or after the receipt of proposals, it is required to issue a written amendment to afford all offerors an opportunity to respond to the revised requirements. AT&T Communications, 65 Comp. Gen. 412 (1986), 86-1 CPD ¶ 247. The RFP specifically provided in the statement of work which had to be addressed by all

^{4/} Costs stated for both offerors do not reflect anticipated computer mainframe costs.

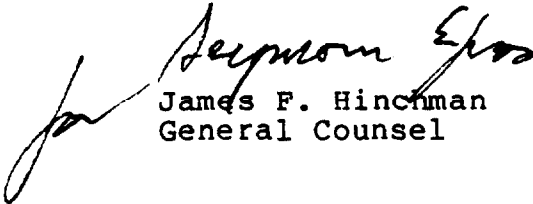
offerors in their proposals that the contractor "shall" provide a Project Director "at least" on an 80 percent basis. The provision in the statement of work was presented as mandatory, and all offerors, except RTI, apparently complied with its terms in submitting proposals. We therefore think that this was a requirement, not an estimate, which was relaxed by the agency in accepting RTI's proposed Project Director on a 53 percent basis. Consequently, we think that the agency should have issued a written amendment to afford all offerors the opportunity to respond to the relaxed requirement. However, DAI has failed to demonstrate that the results of the competition would have been different had it been given an opportunity to respond to the modified requirement.

We think the agency could and would have reasonably selected RTI's proposal for award based on the demonstrated superior technical expertise of its proposed Project Director. Specifically, the record shows that the source selection official clearly considered the RTI proposal superior because of the technical expertise of RTI's Project Director. The source selection official found that RTI's proposed Project Director and senior analyst had intimate familiarity with the data involved in the project because of their experience with the data subcontractor in the original study. Further, these individuals were the only ones who had actual experience in causal modeling analysis on this data; in short, these individuals had extensive experience with the major components of the work under the RFP. Accordingly, we have no basis to disagree with the source selection official that the Project Director proposed by RTI represented the strongest technical expertise available for a contract requiring detailed statistical analysis and that the agency reasonably selected RTI on this basis. While DAI may have been able to reduce its proposed costs for its Project Director had it been allowed to respond to the modified requirement, DAI has failed to show that it would have proposed a different individual for that position had it been aware of the relaxed requirement. Even considering that DAI's cost could have been reduced, the record shows, nevertheless, that award would have been made to RTI because the source selection official reasonably believed RTI's proposal was technically superior. Therefore, since the record shows that the outcome of the competition would not have been different had DAI been informed of the modified requirement, we deny this protest ground.

Finally, DAI protests that the agency imposed a requirement on it to perform a reliability analysis of the data that was not imposed on the awardee. The record establishes that both DAI and RTI proposed to do reliability analysis, but

with different approaches. DAI, by its own judgment, proposed an approach that was more costly and time consuming than that proposed by RTI. During negotiations, DAI was asked to clarify certain aspects of its proposed approach. DAI interpreted the agency's request for clarification as a direction to continue with its proposed approach. DAI now maintains that the agency should have advised it through discussions that a less costly approach would be acceptable. We do not agree. The agency had no reservations regarding either offeror's approach to reliability analysis, and the fact that DAI proposed a more detailed and expensive technique was the result of its own business judgment. Further, DAI's assertions that its proposed method was better does not establish that acceptance of RTI's method was unreasonable.

We deny the protest.


James F. Hinchman
General Counsel